

WALLACE CREEK SAWMILLS

IBLA 86-601

Decided May 8, 1987

Appeal from a decision of the Garnet Resource Area, Bureau of Land Management, terminating Wallace Creek Sawmills' rights and privileges as the high bidder at a timber sale to enter into a contract, and ordering retention of the bid deposit as liquidated damages.

Affirmed.

1. Timber Sales and Disposals

When the high bidder at a timber sale fails to tender the executed contract and the required performance bond, and has failed to make written request for an extension of the time for compliance within 30 days after receipt of the contract, under the governing regulation, the high bidder will forfeit the right to receive the contract and the bid deposit shall be retained as liquidated damages.

2. Administrative Practice of Authority -- Evidence: Presumptions -- Federal Employees and Officers: Generally -- Officers and Employees: Generally -- Rules of Practice: Evidence

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

3. Agency

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery.

APPEARANCES: David L. Sheets, Clinton, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Wallace Creek Sawmills (Wallace Creek) appeals from a decision of the Garnet Resource Area, Missoula, Montana, Bureau of Land Management (BLM),

dated January 10, 1986, terminating Wallace Creek's rights and privileges in and to timber sale contract MT 070-TS6-1 (Top O'Smith sale) for which Wallace Creek had made a successful bid. ^{1/} In addition, the decision called for retention by the Government of the \$ 260 Wallace Creek had submitted as a bid deposit as liquidated damages in accordance with 43 CFR 5450.1(b).

Appellant submitted its bid of \$ 13,613.75 for the Top O'Smith timber sale on November 7, 1985. By letter of November 21, 1985, BLM notified appellant that it had accepted its bid. In its notice, BLM advised appellant:

Please execute all copies of the enclosed timber sale contract and performance bond and return all of the completed forms to this office within 30 days after receipt of this letter. A surety performance bond of \$ 2,800 is requested. If you can not comply with these requirements within the time allowed, please advise us promptly. Extension of this time must be requested in writing and granted in writing prior to expiration of the 30-day period.

The case file contains a BLM memorandum dated December 20, 1985, stating that Dave Sheets of Wallace Creek called BLM to say he was sending a letter requesting an additional 30 days to obtain the bond. Another memorandum dated January 7, 1986, noted that BLM had called Sheets to advise him that Wallace Creek had not returned the timber sale contract. Sheets replied that he had forgotten. Again, he said that he would be sending in his written request for an extension.

On January 10, 1986, BLM issued its decision terminating appellant's rights and privileges as high bidder in the timber sale because BLM had not received the executed contract and performance bond within the 30 days allowed for submission of these documents.

On January 15, 1986, BLM received a letter from Sheets in which he noted he had called BLM before the 30 days had expired to inform BLM that Wallace Creek would be sending a letter requesting an extension of time for obtaining the bond. He said he thought Wallace Creek could raise the money without the extra time, but admitted "it hasn't worked out that way." Sheets then requested an additional 60 days in which to secure the bond. BLM responded, stating that the letter of January 15, 1986, did not meet the requirements for an extension of time.

Appellant set forth the following reasons for its appeal:

- 1- The bond was more than double what I had estimated it to be.

^{1/} The title of appellant is Wallace Creek Sawmills on the bid documents and is Wallace Creek Sawmill on the statement of reasons.

2- I had called the B.L.M. office in Missoula, Montana and talked to Mr. Betts before the 30 day period was up, for furnishing the bond. I told him at that time we would need more time to acquire the bond, due to the increased amount of the bond. I also mentioned that I would follow up this phone call with a letter of request which I did. My letter was 10 days past the 30 days, but I felt I was under grace since I had spoken with Mr. Betts by phone.

In response, BLM indicates that appellant should have been aware of the 20-percent minimum bond requirement in 43 CFR 5451.1(a). BLM also asserts that a phone call to a Bureau employee indicating an intent to apply for an extension of time does not comply with the 43 CFR 5450.1(b) requirement that a request for an extension be in writing.

On March 18, 1986, BLM received a letter from Sheets in which he explained that, upon searching Wallace Creek's files, he found a letter in which Wallace Creek had applied for an extension of time. Sheets contends that this letter was either lost in the mail or misplaced at the BLM office in Missoula, Montana. Sheets attached a copy of this letter, dated December 21, 1985, which contains a request for an extension of time to secure the bond and return the timber sale contract. There was a notation on the face of the letter that it had been mailed on December 23, 1985. BLM forwarded these letters to the Board. In its cover memorandum, BLM states that it was unable to find any record of the letter Sheets claims to have mailed to BLM on December 23, 1985.

Departmental regulation 43 CFR 5451.1(a) provides that a minimum performance bond in an amount not less than 20 percent of the total contract price shall be required for all contracts of \$ 2,500 or more. It is well established that all persons who deal with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Ward Petroleum Corp., 93 IBLA 267 (1986); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). The fact that the bond was more than appellant had initially estimated is of no consequence. A statement of the standard bond requirement was mailed to appellant with the Timber Sale Notice for the Top O'Smith sale. The notice itself contained the following statement: "A performance bond of not less than 20 percent of the contract price will be required." Appellant could have calculated the bond amount at the time the bid amount was formulated. Moreover, BLM asserts that appellant had been awarded five BLM timber sales with the 20-percent minimum performance bond requirement since 1974. The amount of the bond should have been no surprise.

In its statement of reasons appellant contends that his request for an extension of time filed with BLM on January 15, 1986, was timely because BLM had been advised by phone that Wallace Creek would be submitting a written

request within the 30-day period. The appropriate regulation, 43 CFR 5450.1(b), provides:

Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond and any required payment: Provided, That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period. If the successful bidder fails to comply within the stipulated time, his bid deposit shall be retained as liquidated damages.

[1] This regulation specifically requires that a request for an extension of time be in writing and be made within 30 days after receipt of the contract, and Wallace Creek had been so advised in BLM's high-bid notice. The return receipt card shows appellant received the notice and contract on December 4, 1985. Therefore, the time for filing a request for an extension expired on Friday, January 3, 1986. Appellant's request, which was filed with BLM on January 15, 1986, does not meet the time requirement of the regulation.

In its statement of reasons, appellant makes no reference to any other written document that may have been filed within the time required. Further, in his phone conversation with BLM on January 7, 1986, appellant stated that he had forgotten to send in the necessary forms. Appellant's phone call to BLM on December 20, 1985, does not meet the requirements of 43 CFR 5450.1(b) because the request for an extension made during that conversation was not in writing.

When the high bidder at a timber sale fails to tender the executed timber sale contract and the required performance bond, and has failed to make written request for an extension of the time for compliance within 30 days of receipt of the contract, under 43 CFR 5450.1(b), the high bidder will forfeit the right to receive the contract, and the bid deposit shall be retained as liquidated damages. Kenneth G. Brady, d/b/a P.O.L. Logging, 13 IBLA 10 (1973).

[2] In the supplemental information filed with BLM on March 18, 1986, appellant enclosed a copy of a request for extension it claims to have filed on December 23, 1985. Appellant asserts that BLM mislaid the request. BLM, however, has no record of this letter. The presumption of regularity supports the acts of public officers, and in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties. Don Cook, 60 IBLA 255 (1981). Appellant has presented nothing to support its contention, and the memorandum memorializing the January 7, 1986, telephone conversation speaks otherwise. 2/

2/ We note that appellant's request for extension filed Jan. 15, 1986, was sent to BLM certified mail, return receipt requested, as was the supplemental information filed with BLM on Mar. 18, 1986. On the other hand, there is no evidence that appellant's alleged request for extension dated Dec. 21, 1985, was sent certified mail, return receipt requested.

[3] Appellant further speculates that its request for an extension allegedly mailed on December 23, 1985, may have been lost in the mail. Appellant, having chosen the means of delivery of the document, must accept the responsibility and bear the consequences of delay or nondelivery by that method. Carl B. Andersen, 61 IBLA 4 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bruce R. Harris
Administrative Judge